

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

Amar Gueye,
Plaintiff

vs

Case No. 1:08-cv-334-SSB-TSH
(Beckwith, Sr. J.; Hogan, M. J.)

Media Bridges, et. al.,
Defendants

REPORT AND RECOMMENDATION

This matter is before the Court on the motion to dismiss filed by defendant Federal Communications Commissioners, (FCC), (Doc. 34). The motion is unopposed. For the reasons set forth more fully below, this Court recommends that defendant FCC's motion to dismiss be granted and that it be dismissed as a party defendant from this action.

Pro se plaintiff Gueye, a resident of Cincinnati, Ohio, initiated this action with the filing of a motion for leave to proceed *in forma pauperis* and a copy of his complaint on May 14, 2008. (Doc. 1). Plaintiff brought this action against defendants Media Bridges, the Federal Communications Commissioners, the City of Cincinnati, the Greater Cincinnati Foundation, and Fifth Third Bank alleging a violation of his rights under the First Amendment, 42 U.S.C. § 1981, Title VII of the Civil Rights Act of 1964, 5 U.S.C. § 552, and 47 C.F.R. §§ 0.453, 0.465, and 0.463. This Court granted plaintiff leave to proceed *in forma pauperis* and plaintiff's complaint was filed on May 29, 2008. (Docs. 6, 7). By separate order that same date,

pursuant to 28 U.S.C. § 1915(e)(2)(B), the District Court dismissed plaintiff's complaint in its entirety. (Doc. 8). On appeal, the Sixth Circuit affirmed the dismissal order, except for plaintiff's claim under 42 U.S.C. § 1981, and remanded the case for further proceedings. Accordingly, the only claim remaining before this Court is plaintiff's discrimination claim brought pursuant to 42 U.S.C. § 1981.

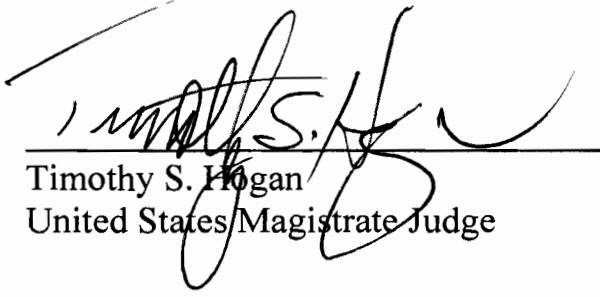
Defendant FCC moves the Court to dismiss the claims against it pursuant to Fed. R. Civ. P. 12(b)(1) & (6). Defendant FCC contends that plaintiff's claims against it are barred by the doctrine of sovereign immunity.

In the present case, pro se plaintiff Gueye seeks an award of money damages against the defendants, including the FCC, for alleged violations of his rights under 42 U.S.C. § 1981. Plaintiff's complaint against the FCC is in effect a suit against the United States as the relief sought would in fact operate against the United States by requiring expenditure of funds from the public fisc. *See Dugan v. Rank*, 372 U.S. 609, 620 (1963); *Land v. Dollar*, 330 U.S. 731, 738 (1947); *Blakely v. United States*, 276 F.3d 853, 870 (6th Cir. 2002).

It is well settled that the United States may not be sued without its consent under the doctrine of sovereign immunity. *See United States v. Mitchell*, 445 U.S. 535, 538 (1980); *Blakely v. United States*, 276 F.3d 853, 870 (6th Cir. 2002). "A waiver of the Federal Government's sovereign immunity must be unequivocally expressed in statutory text and will not be implied." *Lane v. Pena*, 518 U.S. 187, 192 (1996). Absent an explicit waiver of sovereign immunity by statute, suits against the government or its agents must be dismissed. *Loeffler v. Frank*, 486 U.S. 549, 554 (1988); *United States v. Mitchell*, 463 U.S. 206, 212 (1983). It is clear that § 1981 does not unequivocally express a waiver of the United State's sovereign immunity. *Norris v. Principi*, 254 F. Supp.2d 883, 889 (S.D. Ohio 2003)(Rice, J.). Indeed,

Section 1981(c) expressly provides that the “rights protected by this section are protected against impairment by nongovernmental discrimination and impairment under color of State law.” *Id.* (Emphasis added). Accordingly, plaintiff’s claims against defendant FCC are barred by the doctrine of sovereign immunity and should be dismissed.

IT IS THEREFORE RECOMMENDED THAT: Defendant FCC’s motion to dismiss (Doc. 34) be GRANTED.



Timothy S. Hogan
United States Magistrate Judge

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